

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUE HARRIS and DEPARTMENT OF THE AIR FORCE,
WHITEMAN AIR FORCE BASE, MO

*Docket No. 97-1958; Submitted on the Record;
Issued December 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an emotional condition in the performance of duty causally related to factors of her employment.

On June 20, 1995 appellant, then a 42-year-old education technician, filed a Form CA-2, occupational disease claim, alleging that she sustained stress, anxiety, depression and post-traumatic stress disorder because coworkers and management had subjected her to sexual and general harassment and retaliation. She had stopped work on June 19, 1995.¹ In an attached statement, appellant indicated that the trauma had been ongoing but had increased in June 1995 and caused headaches, nausea, vomiting, hives and itching, lack of appetite, sleeplessness and impaired concentration and vision. She returned to work on July 10, 1995 and again stopped on August 9, 1995. On August 14, 1995 she filed a recurrence claim.

After developing the factual evidence, by decision dated February 9, 1996, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the claimed emotional and physical stress had not occurred in the performance of duty. On February 4, 1997 appellant, through counsel, requested reconsideration and submitted additional evidence. In a March 12, 1997 decision, the Office denied modification of its prior decision. The instant appeal follows.

In support of her claim, appellant submitted several personal statements² written chronology and other evidence to the record, including statements and testimony from a number

¹ Appellant's supervisor, Dr. Christine Hoban, signed the CA-2 form on August 23, 1995.

² The record contains appellant's chronology of events that took place from January 1992 to December 1994 in which she enumerated her allegations against Mr. Lowman, including many instances of sexual harassment and that her performance appraisal was downgraded in retaliation for filing an Equal Employment Opportunity (EEO) complaint against Thomas Lowman. She also submitted a diary that covered the period January through August 1995 in which she enumerated her complaints against Gary Clark and Dr. Christine Hoban.

of coworkers. She specifically alleged that management, including Mr. Lowman, Mr. Clark and Dr. Hoban, had subjected her to harassment by openly chastising her in staff meetings, degrading her in front of her peers and sabotaging her work files. Appellant also alleged that her stress was caused by the rehiring of Mr. Lowman after he had been removed from government service. She alleged that she had been subjected to verbal assaults and slander on a daily basis since she filed a complaint with the EEO Commission in October 1994. Appellant indicated that stress was also caused by her annual appraisal being downgraded and that the education services office was reorganized without her input and others were given her work. Finally, she alleged that the problems became magnified after a new education services officer, Dr. Hoban, was appointed. Appellant alleged that Dr. Hoban engaged in a pattern of harassment to force her to quit her job.

A number of coworkers and employees in adjacent offices submitted statements that substantiate that Mr. Lowman's conduct was inappropriate. The employing establishment submitted a notice addressed to Mr. Lowman, stating that it proposed to remove him from his position of supervisor education services specialist and from federal employment due to violations of agency standards of conduct and misuse of government property. The notice specifically alleged that on four occasions Mr. Lowman engaged in unprofessional conduct toward appellant in violation of agency standards.³ A final decision to remove him was issued on January 6, 1995, finding that a preponderance of credible evidence supported the charges. Mr. Lowman was removed effective January 9, 1995.

The record also contains evidence regarding two EEO complaints filed by appellant including two EEO investigator's reports dated May 31 and September 13, 1995. EEO decisions dated August 28 and December 18, 1995 found no discrimination against appellant.⁴

In an August 18, 1995 statement, Michael W. Bartlett stated that the regional personnel office questioned the organizational structure of the education services office, and he decided to eliminate appellant's supervisory position in his desire to make the six-person office function more efficiently. He indicated that his decision was in no way motivated by appellant's performance and ensured that it would not impact her grade level or pay rate, stating that the change improved work distribution and operation. Colonel Bartlett stated that he assured appellant that this was not in retaliation. Regarding appellant's assertion of other employees going through her desk, Colonel Bartlett stated that he explained to appellant that any portion of an employee's desk containing government work was not private property and other employees needed access to find or complete work. He stated that he questioned personnel about her contention that Mr. Clark yelled at and cursed her but could not substantiate her account. Colonel Bartlett stated that he discussed Mr. Lowman's return to the employing establishment with the office staff and that he told appellant that she should report to him if Mr. Lowman contacted her. He concluded that, while appellant was an excellent worker, she had difficulty coping with trying situations and became distraught when confronted with minor work errors.

³ The notice additionally charged that over an extended period of time Mr. Lowman engaged in a frequent pattern of office banter of a sexual nature, touched female employees inappropriately and conducted himself inappropriately with four females, including appellant. Mr. Lowman submitted a May 10, 1995 statement.

⁴ The record indicates that on September 8, 1995 appellant filed a complaint with the U.S. District Court for the Western District of Missouri regarding the August 28, 1995 EEO decision.

Colonel Bartlett stated that he had not discriminated against her and did not believe others were discriminating against her.

In deposition testimony dated August 18, 1995 and an August 24, 1995 statement, Mr. Clark,⁵ who was acting supervisor education services officer from December 5, 1994 until July 16, 1995, disagreed with appellant's contentions, stating, *inter alia*, that her desk was only disturbed when necessary for work and that the reorganization was not in retaliation.

In an October 12, 1995 statement, Dr. Hoban indicated that she became appellant's supervisor on July 16, 1995. She countered appellant's allegations, stated that she encouraged appellant to keep in touch with her physician and communicate to her if she was ill. Dr. Hoban noted that appellant had been removed from the supervisory position prior to her becoming appellant's supervisor and had nothing to do with the performance appraisal in question. She stated that she had meetings with appellant regarding coworkers and concluded that she did not subject appellant to disparate treatment nor engage in a pattern of harassment to force appellant to quit her job, stating "I expressed only concern for her health and welfare, just as I did for each of the employees."

Ronald L. Johnson, Joseph A. Sahlfeld, Ladonna Livingston and Lisa Reeves Earwood, provided statements that refute appellant's claims that she was unfairly treated by Mr. Clark or Dr. Hoban.

The relevant medical evidence includes clinic notes from Nancy Walters, Ph.D., a clinical psychologist covering the period October 19, 1992 through September 29, 1994. In these reports, Dr. Walters indicated that appellant was undergoing individual and family therapy.⁶ Beginning on February 22, 1993, appellant began to relate that she was stressed at work and in 1994 discussed her EEO "problem."

In a March 8, 1995 report, Dr. Bruno H. Zwerenz, who is Board-certified in psychiatry and neurology, noted a history of labile mood, poor appetite with weight loss, memory lapses, explosive angry outbursts, crying spells and lack of energy. He diagnosed adjustment disorder with mixed emotional features and post-traumatic stress disorder and prescribed individual therapy. In a July 21, 1995 report, Dr. Zwerenz advised that appellant was involved in litigation of sexual harassment at work which caused anxiety and depression. In an October 25, 1995 report, he stated that when he first saw appellant she reported that she was filing a suit and was in some type of case review for alleged sexual harassment on the part of an office supervisor. Dr. Zwerenz stated that appellant's labile mood and general signs of depression and lack of energy became exacerbated when she perceived that there was a continuing type of harassment in the form of alleged conspiracy and vague retaliation at work because she was pursuing the sexual harassment suit. He concluded, "This examiner did not provide actual therapy for her

⁵ Mr. Clark also provided an April 5, 1995 statement in which he discussed the atmosphere in the education office and Mr. Lowman's behavior.

⁶ Most of the treatment notes describe family problems including appellant's separation from and the death of her husband while a divorce was in progress.

perceptions other than maintaining a medication treatment approach with therapy being provided by our counselor,” Fran Billings.

In several treatment notes, Ms. Billings, a licensed psychologist, addressed appellant’s problems at work.

The Board finds that appellant has not established that her emotional condition is causally related to her employment.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁸

Workers’ compensation law is not applicable to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers’ compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees’ Compensation Act.⁹ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers’ compensation because it is not considered to have arisen in the course of the employment.¹⁰

In this case, while appellant alleges many instances of error or abuse on the part of the employing establishment, to establish entitlement to benefits, she must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.¹¹ Where the evidence demonstrates that the employing establishment has neither erred nor acted abusively in administrative or personnel matters, coverage will not be afforded¹² and when evaluating

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Abe E. Scott*, 45 ECAB 164 (1993).

¹² *See Sharon R. Bowman*, 45 ECAB 187 (1993).

employing establishment actions, the Board applies a reasonableness standard.¹³ Here, while there is nothing in the record to substantiate most of appellant's claims,¹⁴ in one instance she submitted substantiating evidence.

Regarding the reorganization, the record indicates that this was undertaken after the regional personnel office reviewed the organizational structure and questioned appellant's supervisory designation. The employing establishment also indicated that it was necessary to retrieve items from appellant's desk in her absence. Furthermore, the Board has held that a performance appraisal is an administrative action of the employing establishment and is not compensable absent a showing of error or abuse by the employing establishment.¹⁵ Likewise, there is nothing in the record to support appellant's contention that she was harassed by Dr. Hoban. Lastly, regarding her allegation that she was retaliated against after she filed EEO complaints, the only support for her contention is the August 25, 1995 statement of Ms. Bell. The Board, however, finds this statement of decreased probative value as Ms. Bell's comments are general in nature and were not specific regarding dates and events.¹⁶

Appellant, however, submitted support for her contention that she had been harassed by Mr. Lowman. The record indicates that the employing establishment removed Mr. Lowman on January 6, 1995 due to his unprofessional conduct toward appellant. The employing establishment's finding constitutes substantive evidence that the harassment did, in fact, occur¹⁷ and she has, therefore, established a compensable employment factor.

The Board finds, however, that the medical evidence submitted is not sufficient to meet appellant's burden of proof. Dr. Zwerenz, reports noted only that appellant was involved in a sexual harassment case and that he did not provide therapy for appellant. The remaining medical evidence is insufficient to establish appellant's claim as it does not provide adequate explanation relating any diagnosis to the accepted employment factors.

¹³ See *Frederick D. Richardson*, 45 ECAB 454 (1994).

¹⁴ See *Elizabeth W. Esmil*, 46 ECAB 606 (1995) (assignment of work duties and assessment of performance or conduct are administrative functions); *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995) (matters involving the discipline of employees is an administrative function).

¹⁵ *Sammy N. Cash*, 46 ECAB 419 (1995).

¹⁶ See generally *Mary A. Sisneros*, 46 ECAB 155 (1994).

¹⁷ See *Barbara J. Nicholson*, 45 ECAB 803 (1994).

The decision of the Office of Workers' Compensation Programs dated March 12, 1997 is hereby affirmed as modified.

Dated, Washington, D.C.
December 10, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member